



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
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)	ISCR Case No. 12-01588
)	
Applicant for Security Clearance)	

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: *Pro se*

May 6, 2013

Decision

MOGUL, Martin H., Administrative Judge:

On October 12, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines H, G, and F for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992) (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

On November 7, 2012, Applicant replied to the SOR (RSOR) in writing, and he requested a hearing before an Administrative Judge. The case was assigned to this Administrative Judge on January 8, 2013. DOHA issued a notice of hearing on January 15, 2013, and I convened the hearing as scheduled on February 12, 2013. The Government offered Exhibits 1 through 12, which were received without objection. Applicant testified on his own behalf and submitted Exhibits A through C, which were also admitted without objection. DOHA received the transcript of the hearing (Tr) on February 22, 2013. The record was left open until February 26, 2013, to allow Applicant

to submit additional evidence into the record, which has been identified and entered into the record without objection as Exhibits D, E, and F. Based upon a review of the pleadings, exhibits, and the testimony of Applicant, eligibility for access to classified information is denied.

Findings of Fact

After a complete and thorough review of the evidence in the record discussed above, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 28 years old. He is married, and he has one son and one daughter. He served in the United States Army National Guard from 2003 until 2009 and in the Reserves from 2009 until the present. Applicant is employed by a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector.

Guideline H - Drug Involvement

The SOR lists two allegations (1.a. and 1.b.) under Adjudicative Guideline H.

1.a. The SOR alleges, and Applicant has admitted in his RSOR, that he used marijuana in approximately August 2000. At the hearing, Applicant testified that he had used marijuana on only one occasion at his home with friends when he was 16 years of age. He did not like the feeling, and he averred that he never used marijuana again. (Tr at 36.)

1.b. The SOR alleges, and Applicant has admitted in his RSOR, that he tested positive for methamphetamines (meth) in approximately November 2010, after being granted a security clearance and while in the United States Army Reserves. Applicant testified that he was going through some marital difficulties, and after having some alcoholic drinks with a friend, he and the friend smoked the meth together on one occasion. Again he averred that this was the only time he ingested meth. Two days later he was subject to drug testing, which revealed his meth use. He testified that he was tested every other month while in this Reserve unit, and he only tested positive on this one time.

Applicant averred credibly that he has not used any other drug on any other day, and he continues to be drug tested in his current position. While he is still feeling stress from his marital situation, as he is in the process of going through a divorce, he stated that he has not had any temptation to use any other drug again since this one use in 2010. (Tr at 36-42.)

Finally, Applicant submitted a statement (Exhibit C), signed by him on February 11, 2013, under penalty of perjury, in which he wrote:

1. I have not used drugs since January 2010.
2. I will not use and intend not to use drugs in the future.
3. I understand and agree that any future use of drugs will result in the automatic revocation of my security clearance.

Guideline G - Alcohol Consumption

The Government alleges that Applicant is ineligible for clearance because he has engaged in excessive alcohol consumption, which leads to the exercise of questionable judgement or the failure to control impulses. The SOR lists four allegations (2.a. through 2.d.) regarding Guideline G.

2.a. The SOR alleges, and Applicant has admitted in his RSOR, that he consumed alcohol, at times to excess and to the point of intoxication, from approximately age 16 to the present. At the hearing, Applicant testified that he had consumed alcohol until approximately one month before the date of the hearing, New Year's Eve, 2012. Applicant estimated that in 2012 he was consuming approximately a six pack of beer, a few times a month on his days off. He explained that he did not like who he was when he was drinking, because he became mean to his family and friends. (Tr at 47.)

2.b. The SOR alleges that in March 2006, Applicant was arrested and charged with Driving Under the Influence (DUI). Applicant was convicted and sentenced to three years probation; 30 days confinement, suspended; fined \$1,500; and ordered to attend an alcohol education program. Applicant testified that he plead guilty to DUI, and he had to attend six months of alcohol awareness classes. (Tr at 47-48.)

2.c. The SOR alleges that Applicant was diagnosed as Alcohol Dependent during alcohol treatment that he received, from approximately February 2008 through August 2008, at the United States Army Alcohol and Substance Abuse Program.

2.d. The SOR alleges that in April 2009, Applicant was arrested and charged with DUI and Driving on a Suspended License. Applicant was convicted and was sentenced to five years probation, fined approximately \$3,000, and ordered to attend 18 months of alcohol education program.

Applicant testified that he had not been aware that his license was suspended from his 2006 DUI, because he had been on deployment, and he had not received the notification. Applicant stated that on the occasion of this second arrest on April 2009 for DUI, he had consumed five mixed drinks of Jack Daniels and Coke. He offered that he had stopped drinking two hours before he left the bar so he thought he was "okay to drive." He did not recall his exact blood alcohol when he was stopped by the police, but he knew it was over the legal limit of .08%. (Tr at 48-51.)

Applicant was placed on five years probation for this second DUI, and it remains in effect until 2014. While Applicant continued to consume alcohol until a month before the hearing, as discussed above, he averred that he has not driven a vehicle after consuming any alcohol since the 2009 DUI. (Tr at 51-53.)

Guideline F - Financial Considerations

The SOR lists nine allegations (3.a. through 3.i.) regarding overdue debts under Adjudicative Guideline F. In his RSOR, Applicant admitted all of the debts. The allegations will be discussed below in the same order as they were listed on the SOR:

3.a. This overdue debt is cited in the SOR for a medical account in the amount of \$670. At the hearing, Applicant testified that this debt is still unpaid. (Tr at 54.) I find that this debt has not yet been resolved and is still owing.

3.b. This overdue debt for a collection account is cited in the SOR in the amount of \$675. Applicant testified that this debt is still unpaid. (Tr at 54.) I find that this debt has not yet been resolved and is still owing.

3.c. This overdue debt for a collection account is cited in the SOR in the amount of \$1,083. Applicant testified that this debt is still unpaid. (Tr at 54.) I find that this debt has not yet been resolved and is still owing.

3.d. This overdue debt for a collection account is cited in the SOR in the amount of \$239. Applicant testified that this debt is still unpaid. (Tr at 54.) I find that this debt has not yet been resolved and is still owing.

3.e. This overdue debt for a collection account is cited in the SOR in the amount of \$11,967. Applicant testified that this debt is still unpaid. (Tr at 54.) I find that this debt has not yet been resolved and is still owing.

3.f. This overdue debt for a student loan account is cited in the SOR in the amount of \$306. Applicant testified that this debt is still unpaid. (Tr at 54.) I find that this debt has not yet been resolved and is still owing.

3.g. This overdue debt for a student loan account is cited in the SOR in the amount of \$301. Applicant testified that this debt is still unpaid. (Tr at 54-55.) I find that this debt has not yet been resolved and is still owing.

3.h. This overdue debt for a collection account is cited in the SOR in the amount of \$346. Applicant testified that this debt is still unpaid. (Tr at 55.) I find that this debt has not yet been resolved and is still owing.

3.i. This overdue debt for a collection account is cited in the SOR in the amount of \$5,686. Applicant testified that this debt is still unpaid. (Tr at 55.) I find that this debt has not yet been resolved and is still owing.

Applicant wrote in his RSOR on November 7, 2012, that he was in the process of working with a credit consulting company (CCC) to pay off these debts. At the hearing, he testified that the CCC was “still currently looking at the accounts.” Applicant has paid this company \$800, but thus far no payments have been made to any of the creditors. (Tr at 55-57.) Exhibit D includes a contract signed by Applicant on November 2, 2012, and the CCC whose services he engaged.

Applicant furnished several explanations for his financial problems. Among those discussed were: failing or dropping classes that he took, which required that he pay the tuition for these classes; and a dispute with a landlord of an apartment in which he lived over mold, although he never filed a formal dispute notice with the credit reporting agencies. He also had a car that had been repossessed, and a credit card bill that he believed his wife had incurred, but again, neither he nor the CCC has resolved any of the overdue debts. Some of these debts were incurred or exacerbated during periods of deployment. (Tr at 57-65.)

Mitigation

Applicant submitted three positive letters of recommendation. Applicant was described as a “hard worker,” “loyal,” with “exceptional personal and professional character.” (Exhibit E.) Finally, Applicant submitted his DD Form 214 showing that he had earned a number of medals and ultimately received an Honorable Discharge. (Exhibit F.)

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant’s eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline H - Drug Involvement

The security concern relating to the guideline for Drug Involvement is set out in AG ¶ 24:

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual’s reliability and trustworthiness, both because it may impair judgement and because it raises questions about a person’s ability or willingness to comply with laws, rules and regulations.

With respect to Guideline H, the Government has established its case. Applicant’s improper and illegal drug use of marijuana in August 2000 and meth in 2010, after he had been granted a security clearance in 2005 and was in the United States Army Reserves is of great concern, especially in light of his desire to have access to the nation’s secrets. Applicant’s overall conduct pertaining to his illegal substance use clearly falls within Drug Involvement ¶ 25(a) “any drug abuse” and (c) “illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution.”

However, I find credible and controlling his testimony that he had only used marijuana one time in 2000 and meth one time in 2010, and he has no intention to use drugs in the future. I conclude that ¶ 26(b) “a demonstrated intent not to abuse any drugs in the future,” including (3) “an appropriate period of abstinence;” and (4) “a

signed statement of intent with automatic revocation of clearance for any violation,” is applicable and mitigating.

In this case, the Government has met its initial burden of proving that Applicant has used illegal drugs under Guideline H. Applicant, on the other hand, has introduced persuasive evidence in rebuttal, explanation, or mitigation, which is sufficient to overcome the Government's case against him. Accordingly, Guideline H of the SOR is concluded for Applicant.

Guideline G - Alcohol Consumption

The security concern relating to the guideline for Alcohol Consumption is set out in AG ¶ 21:

Excessive alcohol consumption often leads to the exercise of questionable judgement or the failure to control impulses, and can raise questions about an individual’s reliability and trustworthiness.

Applicant's alcohol consumption resulted in the criminal conduct and convictions listed in subparagraph 2.a. and 2.b.. The Government established that Applicant was involved in “alcohol-related incidents away from work,” and “binge consumption of alcohol to the point of impaired judgement.” Disqualifying conditions AG ¶ 22(a) and (c) apply to this case. AG ¶ 22(e) is also applicable because Applicant was diagnosed as Alcohol Dependent during a substance abuse program he attended in 2008.

In reviewing the mitigating conditions under ¶ 23, I do not find that any are applicable as Applicant only stopped consuming alcohol one month before the hearing, despite his two DUI arrests and convictions, including the most recent that occurred in 2009, and he remains on probation until 2014. Therefore, I find Guideline G against Applicant.

Guideline F - Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns and could potentially apply in this case. Under AG ¶ 19 (a), “an inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19 (c), “a history of not meeting financial obligations” may raise security concerns. I find that both of these

disqualifying conditions apply to Applicant in this case. The evidence has established that Applicant has accumulated significant delinquent debt.

AG ¶ 20 provides conditions that could mitigate security concerns from financial difficulties: Under AG ¶ 20 (b), it may be mitigating where “the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances.” As noted above, Applicant testified that some of his financial problems resulted as a result of periods of time when he was deployed.

However, I do not find that Applicant has acted responsibly regarding these debts. None of the debts listed on the SOR have been resolved. While Applicant has taken some action to resolve the debts, by hiring a CCC, it was only done recently and at this time none of the debts have been satisfied or even reduced by this action.

Similarly, I find that AG ¶ 20 (d) is not applicable, since Applicant has not “initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”

Finally, I do not find that any other mitigating condition is a factor for consideration in this case. I conclude that until Applicant has significantly reduced his overdue debt, he has not mitigated the financial concerns of the Government.

Whole-Person Concept

Under the whole-person concept, the Administrative Judge must evaluate an Applicant’s eligibility for a security clearance by considering the totality of the Applicant’s conduct and all the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual’s age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Based on all of the reasons cited above as to why the disqualifying conditions apply and why the mitigating conditions do not apply, I find that the record evidence leaves me with significant questions and doubts as to Applicant’s eligibility and suitability for a security clearance under the

whole-person concept. For all these reasons, I conclude Applicant has not mitigated the security concerns under the whole-person concept.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline H:	FOR APPLICANT
Subparagraphs 1.a.-1.b.:	For Applicant
Paragraph 2, Guideline G:	AGAINST APPLICANT
Subparagraphs 2.a.-2.d.:	Against Applicant
Paragraph 3, Guideline F:	AGAINST APPLICANT
Subparagraphs 3.a.- 3.i.:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Martin H. Mogul
Administrative Judge